

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 787
Judiciary

(Delegate Atterbeary, *et al.*)

Crimes - Child Abuse and Neglect - Failure to Report

This bill makes it a misdemeanor for a worker to knowingly fail to provide a required notice or make a required report of suspected child abuse or neglect if the worker has knowledge of the abuse or neglect. The knowledge (1) may be inferred from the circumstances; (2) includes actual knowledge or willful blindness; and (3) does not include a duty to investigate. A violator is guilty of a misdemeanor and subject to a maximum penalty of up to three years imprisonment and/or a \$10,000 fine. The bill only applies to a failure to provide the required notice or make the required report that occurs not more than seven years after the victim reaches the age of majority.

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State incarceration costs. Potential minimal increase in general fund revenues due to the bill's monetary penalty provision.

Local Effect: The bill is not anticipated to materially impact local incarceration costs. Potential minimal increase in revenues due to the bill's monetary penalty provision.

Small Business Effect: None.

Analysis

Current Law:

Mandatory Reporters

Health care practitioners, police officers, educators, and human service workers who are acting in a professional capacity, and who have reason to believe that a child has been subjected to abuse or neglect, must notify the local department of social services or the appropriate law enforcement agency. An “educator or human service worker” includes any teacher, counselor, social worker, caseworker, and parole or probation officer. If the worker is acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, then the individual must notify the head of the institution or the designee.

A worker who notifies the appropriate authorities must make an oral report by telephone or direct communication as soon as possible to the local department or the appropriate law enforcement agency if the worker has reason to believe the child has been subjected to abuse or neglect. A written report to the local department is required not later than 48 hours after the contact, examination, or treatment that caused the worker to believe that the child had been subjected to abuse or neglect. A copy of the written report must be provided to the local State’s Attorney. An agency that receives an oral report of suspected abuse or neglect must immediately notify the other agency.

As far as reasonably possible, a worker who makes a report must include the name, age, and home address of the child; the name and home address of the child’s parent or other person responsible for the child’s care; the whereabouts of the child; and the nature and extent of the child abuse or neglect. The report must include any available evidence about previous instances of abuse or neglect, any information that would help to determine the cause of the suspected abuse or neglect, and the identity of any person responsible for the abuse or neglect.

In general, a person other than a health care practitioner, police officer, educator, or human service worker who has reason to believe that a child has been subjected to abuse or neglect must notify the local department of social services or the appropriate law enforcement agency. Attorneys and clergy are generally exempt from reporting if they become aware of suspected abuse or neglect through privileged communications, as specified in statute.

Individuals who in good faith make or participate in making a report of abuse or neglect or participate in an investigation or resulting judicial proceeding are immune from civil liability or criminal penalties.

Penalties for Failure to Report

State law does not criminalize the failure of a worker to report suspected abuse or neglect. The licensing boards for some workers who are mandated to report child abuse and neglect (nurses, doctors, and social workers are examples) are authorized to discipline workers for failing to report. Pursuant to Chapters 374 and 375 of 2016, if an agency is participating in a child abuse or neglect investigation and has substantial grounds to believe that a worker has knowingly failed to make a required report of suspected abuse or neglect, it must file a complaint with the worker's licensing board, law enforcement agency, county board of education, or other agency, institution, or licensed facility, as appropriate, at which the worker is employed.

Child Abuse and Neglect Investigations

After receiving a report of suspected abuse or neglect of a child who lives in Maryland that is alleged to have occurred in the State, the local department of social services and/or the appropriate law enforcement agency must promptly investigate the report to protect the health, safety, and welfare of the child or children. Within 24 hours after receiving a report of suspected physical or sexual child abuse, and within five days after receiving a report of suspected child neglect or mental injury, the local department or law enforcement agency must (1) see the child; (2) attempt to have an on-site interview with the child's caretaker; (3) decide on the safety of the child and of other children in the household; and (4) decide on the safety of the other children in the care or custody of the alleged abuser. The determinations and assessments that are required during an abuse or neglect investigation are specified in statute.

The local State's Attorney must assist in a child abuse or neglect investigation if requested to do so by a local department of social services. The local departments, appropriate law enforcement agencies, the State's Attorneys in the counties and Baltimore City, and the local health officers must enter into a written agreement pertaining to standard operating procedures for investigations of suspected abuse or neglect. A joint investigation procedure must be implemented for conducting investigations of sexual abuse, which must include techniques for expediting validation of sexual abuse complaints and other techniques to decrease trauma to the child.

To the extent possible, a child abuse or neglect investigation must be completed within 10 days after receiving the notice of the suspected abuse or neglect. Within 10 days after receiving the first notice of suspected abuse or neglect of a child, the local department of social services or law enforcement agency must report the preliminary investigation findings to the local State's Attorney. Within 5 business days after the investigation is completed, the local department and the law enforcement agency, if the law enforcement

agency participated in the investigation, must make a complete written report of findings to the local State's Attorney.

Background: For additional information regarding child abuse and neglect, please see **Appendix 1 – Child Abuse and Neglect.**

State Revenues: General fund revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,800 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions. The bill is not anticipated to materially impact State operation costs.

Local Revenues: Revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years. The bill is not anticipated to materially impact local incarceration costs.

Additional Information

Prior Introductions: HB 500 of 2018, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 132, passed the Senate as amended and received a hearing in the House Judiciary Committee, but no further action was taken. SB 135 of 2017, a similar bill, passed the Senate as amended and received a hearing in the House Judiciary Committee, but no further action was taken. HB 389 and

HB 473, other similar bills in 2017, both received hearings in the House Judiciary Committee but were subsequently withdrawn. Numerous similar bills have also been introduced in prior sessions.

Cross File: None.

Information Source(s): Montgomery and Worcester counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Human Services; Child Welfare Information Gateway; Centers for Disease Control and Prevention; National Conference of State Legislatures; Department of Legislative Services

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an/kdm

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Appendix 1 – Child Abuse and Neglect

The Epidemic of Child Abuse and Neglect

According to the Centers for Disease Control and Prevention (CDC) and the National Survey of Children’s Exposure to Violence, 25% of children have experienced abuse or neglect during their lifetimes. Child abuse and neglect is considered by experts to be an adverse childhood experience that may impact lifelong health and well-being. For example, adverse childhood experiences have been shown to increase the chances of risky behaviors, chronic health conditions, financial stress, and poor academic achievement, among other outcomes. A recent report from the National Conference of State Legislatures also notes the CDC’s specific finding that in addition to the physical injuries or emotional and psychological issues that can manifest in the immediate aftermath, childhood violence increases the risk for heart disease, cancer, and obesity, as well as problems with brain development, social skills, and language abilities. Children who have experienced abuse and neglect are also at higher risk of experiencing other forms of violence.

Child Abuse and Neglect in Maryland

The Department of Human Services (DHS) advises that in fiscal 2018, there were 5,308 indicated reports (a finding of credible evidence which has not been satisfactorily refuted) of child abuse, neglect, and mental injury in the State. In addition, 10,757 reports were ruled out and 3,598 reports were unsubstantiated (insufficient evidence to support a finding of “ruled out” or “indicated”). Of the reports for which an indicated finding was made, 733 were for physical abuse, 1,204 were for sexual abuse, 3,365 were for neglect, and 6 were for mental injury. Also in fiscal 2018, DHS referred 8,624 cases for alternative response, which is a process available in specified circumstances that does not include an investigation or a formal determination as to whether abuse or neglect occurred.

Mandatory Reporters

According to the Child Welfare Information Gateway (CWIG), every state and the District of Columbia have laws that identify those people who are required to report suspected incidences of child abuse and neglect. As of August 2015 (the latest information available), 48 states and the District of Columbia specify professions for which the mandatory reporting requirements apply. Typically, mandated reporters include school personnel, social workers, health care workers, child care providers, medical examiners or coroners, and law enforcement officers. The other two states, New Jersey and Wyoming, do not specify professional workers who are required to report but require all persons to report suspected child abuse or neglect. At least 18 states, including Maryland, require

all citizens to report suspected abuse or neglect regardless of profession. In Maryland, however, the reporting requirements for a citizen are less stringent than the reporting requirements for covered professionals.

The Commission to Eliminate Child Abuse and Neglect Fatalities, a national commission created by federal legislation in 2013, noted in its final report that a review of most fatality cases reveals that the children and families were known to someone who was in a position to help, such as medical personnel, neighbors, and mental health and substance abuse treatment providers. However, the report also indicated that professionals who are mandatory reporters have varying levels of knowledge and information about reporting. It cited one study with findings that clinicians did not report at least 25% of injuries considered likely to be due to child abuse and 75% of injuries possibly caused by child abuse. Demanding greater accountability from mandatory reporters was one recommendation cited in the commission's report.

Failure to Report Penalties in Other States

According to CWIG, as of August 2015, 48 states and the District of Columbia impose penalties on mandatory reporters who knowingly or willfully fail to report suspected child abuse or neglect. The only other state that does not impose a penalty, in addition to Maryland, is Wyoming.

In 40 of the 48 states that impose penalties, the penalty is specified as a misdemeanor. In Arizona and Minnesota, misdemeanors are upgraded to felonies for failure to report more serious situations, while in Connecticut, Illinois, and Kentucky, second or subsequent violations are classified as felonies.

A mandated reporter who fails to report can face jail terms ranging from 30 days to five years and/or fines ranging from \$300 to \$10,000. In California and Massachusetts, harsher penalties are imposed when the failure to report results in the child's death or serious bodily injury. Louisiana imposes harsher penalties when the reporter fails to report sexual abuse or serious bodily injury. Delaware and Virginia impose harsher penalties upon second or subsequent convictions for failure to report. Vermont imposes its fine for failure to report when the reporter willfully failed to report with the intent to conceal the abuse. West Virginia imposes harsher penalties for the failure to report the sexual assault of a child.